Maheswari a/p Kartigesu v YB Menteri Kewangan Malaysia & Anor

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO S5–21–265 OF 2002
TEE AH SING J
31 JANUARY 2004

Land Law — Charge — Interest — Charge annexure permitted defendants to vary rate of interest with effect from specified future date — Whether defendants authorized to increase or vary rate of interest to a date prior to date of notice

Public Servants — Contract — Contract of employment — Charge annexure permitted defendants to vary rate of interest with effect from specified future date — Whether defendants authorized to increase or vary rate of interest to a date prior to date of notice

Public Servants — Contract — Contract of employment — Plaintiff obtained staff housing loan at interest of 4%pa — Whether defendants estopped from varying interest rate even though defendants allowed plaintiff to continue with housing loan after plaintiff's resignation

The plaintiff, an employee of the Ministry of Defence, was granted a staff housing loan by the defendants in 1981. Interest was calculated at the rate of 4%pa. The housing loan was secured by a charge in respect of a piece of property ('the said property'). The plaintiff resigned on 30 November 1985 but the defendants' housing loan division was only informed regarding the plaintiff's resignation in July 1994. By a letter dated 12 September 1994 ('exh 'SH-10'), the defendants' housing loan division informed the plaintiff that interest had been changed to 7%pa with effect from January 1989. The plaintiff denied having received exh 'SH-10'. The defendants' housing loan division sent another letter on 17 September 1994 to the plaintiff (exh 'SH-11') and in it, the plaintiff was informed regarding the different rates of interest which were applicable from November 1985 onwards. In this application, the plaintiff prayed for: (1) a declaration that the defendant was not entitled, in law, to impose interest at more than 4%pa on the housing loan; (2) a declaration that the defendant was estopped from claiming interest at more than 4%pa on the housing loan; (3) an order that the plaintiff be permitted to redeem the said property upon payment of the principal sum due and owing by the plaintiff, calculated at 4%pa ('the redemption sum'); (4) an order that the first defendant execute the discharge of charge in respect of the said property and forward to the plaintiff the issue document of title upon payment of the redemption sum; and (5) costs be paid by the defendants to the plaintiff.

Held, allowing prayers (1), (3), (4) and (5):

(1) The defendants were not estopped from varying the rate of interest imposed on the housing loan even though they had allowed the plaintiff to continue with the housing loan after her resignation. This was because cl 6 of the charge annexure permitted the chargee to vary the interest

rate at any time and from time to time by giving to the chargor a written notice and stating therein the effective date of the change in interest. In addition, cl 21 of the charge annexure provided that no failure by the chargee in exercising its remedy upon default on the part of the chargor shall be construed as a waiver thereof or any acquiescence in such default (see paras 20–24); *Terrance Simon Marbeck v Kerajaan Malaysia* [2003] MLJU 48; [2003] 6 CLJ 120 followed.

(2) The language of cl 6 was clear in that the defendants can only give a written notice to vary the rate of interest with effect from a specified future date. Clause 6 did not authorize the defendants to increase or vary the rate of interest to a date prior to the date of the notice (see para 32).

(3) The plaintiff had denied receiving exh 'SH-10' and the defendants did not adduce any evidence to show that exh 'SH-10' had been received by the plaintiff. Even if the court were wrong in holding that the plaintiff did not receive exh 'SH-10', exh 'SH-10' was not a valid notice to vary the interest rate because the notice to vary the rate of interest was backdated to January 1989, which was not allowed under the charge annexure. Similarly, exh 'SH-11' was also not a valid notice to vary the rate of interest as required by cl 6 of the charge annexure. As such and since no written notice of increase was ever given by the defendants, they were not entitled to increase the rate of interest (see paras 33, 37–38, 44–45).

[**Bahasa Malaysia summary**

Plaintif, seorang pekerja Kementerian Pertahanan, telah diberikan pinjaman perumahan kakitangan oleh defendan-defendan pada tahun 1981. Faedah dikira pada kadar 4% setahun. Pinjaman perumahan tersebut dijamin oleh satu gadaian berkaitan sekeping hartanah ('hartanah tersebut'). Plaintif telah berhenti kerja pada 30 November 1985 tetapi bahagian pinjaman perumahan defendan-defendan hanya dimaklumkan berhubung pemberhentian kerja plaintif pada bulan Julai 1994. Melalui sepucuk surat bertarikh 12 September 1994 ('eksh 'SH-10'), bahagian pinjaman perumahan defendan-defendan memaklumkan plaintif bahawa faedah telah ditukar kepada 7% setahun bermula kuatkuasa daripada bulan Januari 1989. Plaintif menafikan telah menerima eksh 'SH-10'. Bahagian pinjaman perumahan defendan-defendan telah menghantar satu lagi surat pada 17 September 1994 kepada plaintif (eksh 'SH-11') dan di dalamnya, plaintif dimaklumkan berhubung perbezaan kadar faedah yang terpakai bermula daripada bulan November 1985. Dalam permohonan ini, plaintif telah memohon untuk: (1) satu deklarasi bahawa defendan tidak berhak, dari segi undang-undang, untuk mengenakan faedah lebih daripada 4% setahun ke atas pinjaman perumahan; (2) satu deklarasi bahawa defendan diestopkan daripada menuntut faedah lebih daripada 4% setahun ke atas pinjaman perumahan; (3) satu perintah bahawa plaintif dibenarkan menebus kembali hartanah tersebut setelah pembayaran jumlah utama yang perlu dibayar dan tertunggah oleh plaintif, dikira pada 4% setahun ('jumlah penebusan); (4) satu perintah defendan pertama menyempurnakan

pembebasan cagaran berkaitan hartanah tersebut dan mengemukakan kepada plaintif dokumen hakmilik keluaran setelah pembayaran jumlah penebusan; dan (5) kos perlu dibayar oleh defendan-defendan kepada plaintiff.

Diputuskan, membenarkan permohonan-permohonan (1), (3), (4) dan (5):

(1) Defendan-defendan tidak diestopkan daripada mengubah kadar faedah yang dikenakan ke atas pinjaman perumahan walaupun mereka telah membenarkan plaintif meneruskan pinjaman perumahan tersebut selepas beliau berhenti kerja. Ini adalah kerana kl 6 lampiran gadaian membenarkan pemegang gadaian untuk mengubah kadar faedah pada bila-bila masa dan dari masa ke semasa dengan memberikan kepada penggadai satu notis bertulis dan menyatakan di dalamnya tarikh berkuatkuasa pertukaran faedah tersebut. Tambahan pula, kl 21 lampiran gadaian memperuntukkan bahawa tiada kegagalan oleh pemegang gadaian dalam melaksanakan remedinya sekiranya berlaku kegagalan di pihak penggadai hendaklah ditafsirkan sebagai satu penepian atau apa-apa persetujuan berhubung kegagalan tersebut (lihat perenggan-perenggan 20–24); *Terrance Simon Marbeck v Kerajaan Malaysia* [2003] MLJU 48; [2003] 6 CLJ 120 diikut.

(2) Bahasa kl 6 adalah jelas di mana defendan-defendan hanya boleh memberikan satu notis bertulis untuk mengubah kadar faedah bermula kuatkuasa daripada satu tarikh masa hadapan yang spesifik. Klausa 6 tidak memberikan kuasa kepada defendan-defendan untuk menambah atau mengubah kadar faedah kepada satu tarikh sebelum tarikh notis tersebut (lihat perenggan 32).

(3) Plaintif telah menafikan telah menerima eksh 'SH-10' dan defendan-defendan tidak mengemukakan apa-apa keterangan untuk menunjukkan bahawa eksh 'SH-10' telahpun diterima oleh plaintif. Walaupun mahkamah tersilap dalam membuat keputusan bahawa plaintif tidak menerima eksh 'SH-10', eksh 'SH-10' bukan satu notis yang sah untuk mengubah kadar faedah kerana notis untuk mengubah kadar faedah tersebut bertarikh ke belakang pada bulan Januari 1989, yang tidak dibenarkan di bawah lampiran gadaian. Begitu juga, eksh 'SH-11' juga bukan satu notis yang sah untuk mengubah kadar faedah sebagaimana yang diperuntukkan oleh kl 6 lampiran gadaian. Oleh demikian dan memandangkan tiada notis bertulis tentang pertambahan tersebut telah diberi oleh defendan-defendan, mereka tidak berhak untuk menambah kadar faedah tersebut (lihat perenggan-perenggan 33, 37–38, 44–45).]

Notes

For cases on contract of employment, see 10 *Mallal's Digest* (4th Ed, 2002 Reissue) para 1759.

For cases on interest of charge, see 8(2) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 1907–1913.

For charge, see 8 *Halsbury's Laws of Malaysia* (2003 Reissue) paras [150.343]–[150.380].

For contract of employment, see 7 *Halsbury's Laws of Malaysia* (2003 Reissue) para [120.002].

Cases referred to

Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Bhd [1995] 3 MLJ 331 (refd)
Government of Malaysia v Rosalind Oh Lee Pek Inn [1973] 1 MLJ 222 (refd)
Terrance Simon Marbeck v Kerajaan Malaysia [2003] 6 CLJ 120 (folld)

Legislation referred to

National Land Code 1965 s 431

George C Proctor (YS Woo & Proctor) for the plaintiff.
Noor Hisham Ismail (Senior Federal Counsel, Housing Loan Dept, Treasury) for the defendants.

Tee Ah Sing J:

[1] By an originating summons (encl 1) the plaintiff prays for the following orders:

(1) Satu Deklarasi bahawa Defendan tidak sah di sisi undang-undang, berhak mengenakan kadar faedah lebih dari 4% setahun atas pinjaman perumahan sejumlah RM81,632.00 sebagai pinjaman (advanced) kepada Plaintif di bawah Gadaian yang diberikan pada 10/08/1990;

(2) Satu Deklarasi bahawa Defendan dihalang (estopped) daripada menuntut kadar faedah lebih dari 4% setahun atas pinjaman perumahan sejumlah RM81,632.00 sebagai pinjaman (advanced) kepada Plaintif di bawah Gadaian yang diberikan pada 10/08/1990;

(3) Satu Perintah bahawa Plaintif dibenarkan untuk menebus hartanah yang dikenali sebagai HS (D) 5002, Lot No 29584, Mukim dan Daerah Kuala Lumpur berserta sebuah rumah yang beralamat di No. 156, Jalan Pinggir Zaaba, Taman Tun Dr Ismail, 60000 Kuala Lumpur, yang terletak di atasnya, atas bayaran baki jumlah utama (principal sum) yang masih tertunggak dan terhutang oleh Plaintif dengan faedah yang dikira dan berbayar di atasnya pada 4% setahun;

(4) Satu Perintah bahawa selepas Plaintif membayar jumlah penebusan, Defendan Pertama boleh menyebabkan menyempurnakan perlepasan gadaian, Perihal (Presentation) No. 26718/90, Jilid 589, Folio 56, dan membekalkan kepada Plaintif dokumen hakmilik hartanah yang dinyatakan di atas;

(5) Kos dibayar oleh Defendan kepada Plaintif;

(6) Selanjutnya dan relif yang lain yang Mahkamah Yang Mulia ini fikir patut dan sesuai.

[2] This originating summons is supported by the affidavit of the plaintiff affirmed on 25 November 2002 (encl 2).

[3] An 'afidavit balasan defendan-defendan' was affirmed by Sarimah binti Husain on 11 January 2003 (encl 5).

[4] An 'afidavit pembetulan' was affirmed by the plaintiff on 30 January 2003 (encl 6). An 'afidavit balasan' was affirmed by the plaintiff on 25 February 2003 (encl 8). A

[5] An 'afidavit balasan defendan-defendan' (2) was affirmed by Sarimah binti Husain on 6 March 2003 (encl 9).

B

[6] An 'afidavit pembetulan plaintif' (2) was affirmed by the Plaintiff on 6 August 2003 (encl 11).

[7] The brief facts of the case are as follows.

[8] Vide letter dated 20 May 1981 (exh 'SH-2') the Ministry of Defence forwarded the plaintiff's application for a housing loan from the Housing Loans Division of the Treasury. And on 24 July 1981 vide letter exh 'SH-3' the Housing Loans Division granted a loan of RM81,632 to the plaintiff. C

[9] As security for the said housing loan of RM81,632 property known as HS(D) 5002, Lot No 29584, Mukim Kuala Lumpur, together with house No 156, Jalan Pinggir Zaaba, Taman Tun Dr Ismail, 60000 Kuala Lumpur erected thereon ('the said property') was charged to the Government of Malaysia by a third party charge. D

[10] On 10 August 1990 at the request of the plaintiff and her husband and with the agreement and consent of the Housing Loans Division, the said property was transferred and registered in the plaintiff's sole name and a fresh charge was created in favour of the first defendant vide exh 'M-1'. E

[11] The said housing loan was repayable monthly by the plaintiff in the sum of RM430.89 from August 1981 to July 2006 and which sum included interest calculated at 4%pa.

F

[12] In reply to a letter dated 21 June 1994 reference PP 9636/81/3(72) from the Housing Loans Division by a letter dated 4 July 1994 (exh 'SH-4') the Ministry of Defence informed the Housing Loans Division that the Plaintiff has resigned from the Government service with effect from 30 November 1985.

[13] In encl 5, it was averred, inter alia, that since the plaintiff had resigned on 30 November 1985 by virtue of Pekeliling Perbendaharaan Bil 5 Tahun 1980 (exh 'SH-5'), Pekeliling Perbendaharaan Bil 4 Tahun 1985 (exh 'SH-6'), Surat Pekeliling Perbendaharaan Bil 2 Tahun 1985 (exh 'SH-7'), Surat Pekeliling Perbendaharaan Bil 8 Tahun 1987 (exh 'SH-8'), Surat Pekeliling Perbendaharaan Bil 15 Tahun 1988 (exh 'SH-9') and Pekeliling Perbendaharaan Bil 6 Tahun 1995 (exh 'SH-12'), the Housing Loans Division has the right to increase and/or vary the rate of interest. And in para 21 of encl 5 it is averred as follows: G H

> Defendan-Defendan menegaskan bahawa dengan menandatangani Lampiran E Gadaian, Plaintif telah bersetuju dengan semua terma-terma Gadaian tersebut dan maklum bahawa terma-terma Gadaian tersebut akan turut tertakluk kepada pindaan-pindaan Pekeliling Perbendaharaan dan Surat Pekeliling Perbendaharaan dari masa ke semasa. I

[14] In para 20 of encl 5, it is averred as follows:

> Defendan-Defendan sesungguhnya menyatakan bahawa kenaikan dan penurunan kadar-kadar faedah ini telah dimaklumkan kepada Plaintif melalui Notis Mengenal Perubahan Kadar Faedah Pinjaman Perumahan Kerajaan bertarikh 12 September 1994 dan 17 September 1994 yang telah dialamatkan ke alamat yang sama seperti alamat kediaman Plaintif kini. Melalui notis Pertama dan Kedua tersebut, Plaintif telah diminta untuk menjelaskan tunggakan berjumlah RM24,899.13 dan bayaran balik bulanan dinaikkan kepada RM566.60 selaras dengan faedah pada 7% setahun setelah mengambilkira kenaikan dan penurunan kadar faedah yang dikenakan. Walaupun notis secara bertulis telah dikemukakan kepada Plaintif, tiada bayaran sepenuhnya dibuat. Sesalinan surat-surat bertarikh 12 September 1994 dan 17September 1994 tersebut dikemukakan di sini dan masing-masing ditandakan sebagai eksh 'SH-10' dan eksh 'SH-11'.

[15] Paragraphs 2 and 3 of encl 11 reads as follows:

> 2 Saya memohon untuk merujuk kepada Afidavit Balasan (Lampiran 8) di dalam butir-butir terhadap perenggan 5 yang mana saya menyatakan bahawa saya telah menerima surat daripada Defendan bertarikh 12 September 1994 dan bukan surat daripada mereka bertarikh 17 September 1994.
>
> 3 Selepas memeriksa rekod saya, sebenarnya saya telah menerima surat mereka bertarikh 17 September 1994 dan bukan surat mereka bertarikh 12 September 1994. Kesalahan tersebut adalah satu kelalaian dan saya memohon maaf terhadap yang sama. Sesalinan surat peguamcara saya bertarikh 9 November 1994 kepada Defendan yang membantah terhadap isi kandungan surat Defendan bertarikh 17 September 1994 tersebut kini ditunjukkan kepada saya dan ditandakan sebagai eksh 'M-5'.

[16] The learned counsel for the plaintiff had submitted, inter alia, as follows:

1(a) The charge annexture states at cl 6(a) that any variation in the rate of interest shall be by a notice in writing and shall take effect from the date stated in the written notice.

(b) Clause 19 of the charge annexture requires that any written notice shall be sent in accordance with the provisions of the National Land Code ('the NLC'). Section 431 of the NLC provides, inter alia, that all notices shall be sent personally or by prepaid registered post.

(c) The plaintiff only received the letter dated 17 September 1994 (exh 'SH-11') which letter in any event was not a valid one as the said letter was not sent by registered post or personally served as required by cll 6 and 19 of the charge annexture. As such, this does not constitute a proper notice and invalid.

(d) The plaintiff in her affidavit denies receipt of exh 'SH-10'.

(e) Although exh 'SH-11' was received the same was objected to by the plaintiff's solicitors as the defendants were attempting to back date the interest to 1989.

(f) Since no written notice of increase was given, the defendants are not entitled to increase and/or vary the rate of interest.

2(a) The plaintiff resigned in 1985.
(b) In June 2000, defendants' statement of account states amount owing RM29,187.56 with interest at 4%pa.
(c) The defendants are estopped from back-dating interest as there are no provisions in the charge annexture to back date interest.

In support the case of Boustead Trading [1985] Sdn. Bhd. v Arab-Malaysian Merchant Bank Bhd [1995] 3 MLJ 331 is cited.

3(a) The defendants find their authority to claim interest in excess of 4%pa on the departmental circulars.
(b) But departmental circulars are merely rules issued under statutory power.
(c) The departmental circulars relied on are unilateral in nature. They are to inform officers concerned of what is to be done. For strangers to be bound, the defendants are required to communicate the necessary information in writing (as per the contract) to the plaintiff.

[17] The learned senior federal counsel for the defendants had submitted, inter alia, as follows:

1 the sole complaint of the plaintiff is only in respect of whether the defendants has the right to back date the interests;

2 whether proper notice or notices have been given to the plaintiff by the defendants to effect such variance of interests, is no longer an issue for the notice by the defendants dated 17 September 1994 had been admitted received by the plaintiff;

3 the plaintiff had resigned on 30 November 1985 but that fact was only brought to the attention of the Defendants on 7 July 1994 (see exh 'SH-4' of encl 5);

4 the relationship between the plaintiff and the defendants is 'a contract of special kind' where the plaintiff's right and obligations are determined by statute or statutory or on administrative rules made by the government (see the case of *Government of Malaysia v Rosalind Oh Lee Pek Inn* [1973] 1 MLJ 222);

5 the words and expressions used under cll 21 and 29 of the charge annexture are self explanatory in authorizing the defendants to in its discretion to vary the rate of interest from time to time.

[18] I shall now deal with the matter before me.

[19] Clause 6 of the charge annexture reads as follows:

6 Walau apapun peruntukan-peruntukan lain yang terkandung dalam Gadaian ini, jumlah wang pokok yang dengan ini dicagarkan adalah dipinjamkan atau didahulukan atas syarat bahawa Pemegang Gadaian adalah layak pada bila-bila masa dan dari semasa ke semasa dengan menyampaikan suatu notis secara bertulis kepada Penggadai mengenai tujuannya untuk berbuat demikian menambah atau mengurangkan kadar bunga yang kena dibayar di bawah ini dan berhubung dengannya itu peruntukan-peruntukan berikut adalah terpakai dan berkuatkuasa:

(a) Apa-apa pertambahan atau pengurangan dalam kadar bunga hendaklah mula berkuatkuasa dan kena dibayar dari tarikh sebagaimana dinyatakan dalam notis tersebut dan hendaklah dihitung sebagaimana diperuntukkan sebelum dari ini.

(b) Sebagai ganti ansuran bulanan yang tersebut dalam Fasal 1 Gadaian ini, Penggadai hendaklah mulai dari habisnya tempoh notis itu membayar apa-apa ansuran bulanan yang bertambah atau berkurangan sebagaimana yang wajar dengan memberi perhatian kepada perubahan yang dikuatkuasakan tentang kadar bunga yang kena dibayar itu.

(c) Penggadai boleh menurut pilihannya memilih untuk menganggap notis itu sebagai notis yang menghendaki pembayaran akan semua wang yang didapati ketika itu oleh Pemegang Gadaian itu tetapi jika demikian halnya dia hendaklah memberi pemberitahuan bertulis mengenai pemilihan itu kepada Pemegang Gadaian dalam tempoh satu bulan dari tarikh penyampaian notis itu dan hendaklah apabila habisnya tempoh notis itu menebus tanah tersebut dengan membuat pembayaran sebagaimana dinyatakan dalam Fasal 4 (b).

(d) Keputusan Pemegang Gadaian mengenai apakah kadar bunga yang dikenakan pada bila-bila masa adalah terakhir dan muktamad dan tidaklah boleh dipersoalkan atas apa-apa jua sebab.

[20] I shall first consider the contention of the plaintiff that the defendants are estopped from varying the rate of interest.

[21] In the case of *Terrance Simon Marbeck v Kerajaan Malaysia* [2003] MLJU 48; [2003] 6 CLJ 120, his Lordship Low Hop Bing J at pp 129–130 said:

> The judgment of Abdul Hamid bin Embong JC (now J) in *Kerajaan Malaysia v Mohd Mokhtar Ali* [1996] 1 CLJ 816 is illuminating in that the facts in that case are substantially the same as those in the instant case. There, the defendant's land was charged to the plaintiff on 17 September 1982 as security for the payment to the plaintiff of a government loan extended by the plaintiff to the defendant as a public servant. The defendant resigned from public service on 10 March 1983. On 23 March 1983, the plaintiff by way of letter to the defendant allowed the defendant to repay the loan by original instalments as usual at RM339.44 monthly for 298 months.
>
> Subsequently, the defendant by way of notice dated 31 January 1985 informed the defendant that the interest rate for his housing loan has been raised to 10%pa with effect from 1985 and due to that his monthly instalment has been increased to RM568.77 per month. By a notice dated 20 June 1987, the interest rate was reduced from 10% to 9%pa with effect from 1 July 1987. Thereafter by a notice dated 3 January 1989, the interest rate was further reduced from 9% to 7%pa. The defendant's several appeals against the increase in the interest rate were rejected by the plaintiff.
>
> The defendant raised the issue of estoppel in that the plaintiff had allowed him to continue with the outstanding repayment at RM339.44 monthly for 298 months and that the upward variation of interest to 10% vide the plaintiff's letter dated 31 January 1985 was contrary to the representation made by the plaintiff *vide* letter dated 23 March 1983. There was also a clause in the charge document reserving to the plaintiff the right to vary the rate of interest.
>
> His Lordship in a well-considered judgment held, inter alia, as follows:
>
> 'In my view, even though the plaintiff had permitted the defendant to continue with the housing loan which he had obtained as a government servant, *vide* Exh C, that permission did not preclude the plaintiff from enforcing the terms of the

charge as stipulated in the aforecited clauses. Interest rates may be increased or reduced by the plaintiff as chargee upon notification to the defendant chargor. If the defendant's proposition that the plaintiff was estopped from varying the interest rate were correct, then a situation would arise that whilst the government may vary upwards interests on housing loans of serving government servants, it may not do so in respect of loans taken by those who had resigned from government service. This is ludicrous as it is unjust. Clearly this is not what is intended by cll 5 and 6 stated above.

It is my considered opinion that there can be no other construction to the said clauses than that of giving the plaintiff chargee an unfettered right to vary the interest "at any time and from time to time". Of course, whenever there is a downward variation of the interest the defendant also stood to gain as well. This benefit to the defendant was clearly demonstrated when the interest rate on his loan was reduced from 10%pa to 9%pa with effect from 1 July 1987, and subsequently to the current 7%pa as of 1 January 1989 (see exh LYG2A, 2B, 2C, encl 28).'

I am in entire agreement with the above judgment and therefore hold that the plaintiff's contention that estoppel operated against the defendant in the instant case cannot be sustained.

[22] I am in full agreement with the above judgment and therefore hold that the plaintiff's contention that estoppel operated against the defendants cannot be sustained.

[23] Clause 21 of the charge annexture reads as follows:

21 Walaupun hakikatnya bahawa Pemegang Gadaian mungkin tidak menjalankan apa-apa remedi yang boleh didapati olehnya sebaik sahaja berlakunya kemungkiran oleh Penggadai atau bahawa Pemegang Gadaian mungkin telah menerima wang daripada Penggadai selepas kemungkiran itu maka Pemegang Gadaian tidaklah boleh dikira memaafkan atau mempersetujui kemungkiran itu dan boleh pada bila-bila masa selepas itu menjalankan segala atau mana-mana remedi yang terdapat padanya dan apa-apa kelewatan di pihak Pemegang Gadaian dalam mengambil langkah untuk menguatkuasakan remedi-remedi yang diberi atau terdapat padanya melalui Gadaian ini atau statut tidaklah boleh dianggap menjejaskan haknya untuk bertindak berkenaan dengan hak itu.

[24] I am of the view that by virtue of cl 21 the issue of estoppel or waiver cannot be raised against the defendants.

[25] Clause 29 of the charge annexture reads as follows:

29 Segala terma, syarat dan janjian Skim Pinjaman Perumahan yang diterima oleh Pemegang Gadaian yang dipinda dari semasa ke semasa adalah terpakai bagi Gadaian ini.

[26] Since the plaintiff has resigned from Government service pursuant to cl 29 of the charge annexture, Pekeliling Perbendaharaan Bil 5 Tahun 1980 (exh 'SH-5'), Pekeliling Perbendaharaan Bil 4 Tahun 1985 (exh 'SH-6'), Surat Pekeliling Perbendaharaan Bil 2 Tahun 1985 (exh 'SH-7'), Surat Pekeliling Perbendaharaan Bil 8 Tahun 1987 (exh 'SH-8'), Surat Pekeliling Perbendaharaan Bil 15 Tahun 1988 (exh 'SH-9') and Pekeliling Perbendaharaan Bil 6 Tahun 1995 (exh 'SH-12') are applicable.

[27] Under these Treasury Circulars the Housing Loans Division has the right at its discretion to increase and/or to vary the rate of interest in respect of housing loans taken by officers who have resigned.

[28] However, cl 29 of the charge annexture is subject to the overriding provision in cl 6 of the charge annexture by virtue of the words 'walau apapun peruntukan-peruntukan lain yang terkandung dalam Gadaian ini …' in cl 6.

[29] Further under cl 6(a) of the charge annexture, the written notice of increase or decrease in the rate of interest shall take effect from the date specified in the notice. And under cl 6 (b) of the charge annexture the chargor must after the expiry of the period stipulated in the notice pay whatever increased or reduced monthly instalment.

[30] The language of the whole of cl 6 of the charge annexture is clear. The Housing Loans Division can only give a written notice to increase and/or vary the rate of interest to state that the rate of variation of interest shall take effect at a specified future date.

[31] Clause 6 of the charge annexture does not authorize the Housing Loans Division to back date the claim to increase the rate of interest.

[32] If cl 6 of the charge annexture can be construed as giving the Housing Loans Division the discretion to increase and/or vary the rate of interest to a date prior to the date of the notice as contended by the defendants then since there are two possible constructions of this cl 6, I have to construe it contra proferentem, that is against the Housing Loans Division.

[33] The plaintiff in para 3 of encl 11 has denied that she received the letter dated 12 September 1994 (exh 'SH-10') but she admitted receiving the letter dated 17 September 1994 (exh 'SH-11'). I note that in the letter dated 12September 1994 (exh 'SH-10') there is nothing stated on the letter itself that it was sent by registered post or AR register as has been done for exh 'SH-11'. So it is for the defendants to adduce affidavit evidence that exh 'SH-10' has been received by the plaintiff. However, I find that there is no affidavit evidence that exh 'SH-10' has been received by the plaintiff. In the event that I am wrong that the plaintiff did not receive exh 'SH-10', I shall have to consider whether exh 'SH-10' is a written notice to increase and/or vary the rate of interest under cl 6.

[34] The relevant parts of exh 'SH-10' reads as follows:

> 2 Mengikut Notis Perubahan Kadar Faedah bertarikh … kadar pinjaman tuan telah diturunkan kepada 7% setahun mulai dari Januari 1989.
>
> 3 …
>
> 4 Mengikut rekod pejabat ini, tuan masih mempunyai tunggakan bayaran balik sebanyak $24,899.13 bagi bulan seperti di lampiran. Sila tuan jelaskan tunggakan ini sebelum September 1994 jika tidak tindakan akan diambil untuk mendapatkan kembali semua baki pinjaman tuan. Jika sekiranya tuan telah menjelaskan bayaran balik bagi bulan-bulan tersebut di atas, tuntutan ini adalah dianggap batal.

5 Tuan hanya boleh membuat ansuran baru sebanyak $566.60 sebulan mulai bulan September 1994 hingga bulan Julai 2006 iaitu untuk tempoh **143** bulan sekiranya tuan tiada mempunyai tunggakan atau telah menyelesaikan tunggakan seperti di para 4 di atas dalam tempoh yang ditetapkan. Amaun Ansuran ini adalah tertakluk kepada pindaan.

6 Walaupun kadar ansuran baru ini bermula pada September 1994 tetapi kadar faedah 7% setahun yang dikenakan dikira mulai bulan Januari 1989. Ini bermakna bayaran balik bagi bulan Januari 1989 hingga Ogos 1994 adalah diselaraskan.

[35] Exhibit 'SH-10' is dated 12 September 1994. Paragraph 4 informed the plaintiff that she has an outstanding arrears of RM24,899.13 from November 1985 to August 1994 to settle. This is confirmed by the Lampiran.

[36] Paragraph 5 is not the notice to increase and/or to vary the rate of interest with effect from September 1994.

[37] Further from paragraph 6 it is clear that the rate of interest of 7%pa was with effect from January 1989.

[38] In other words the notice to increase and/or vary the rate of interest was back dated which is not allowed under the charge annexture. This I find that exh 'SH-10' is not a valid notice. There is this no valid written notice given to the plaintiff as regards the defendants' right to vary the rate of interest.

[39] The plaintiff has admitted receiving the letter dated 17 September 1994 (exh 'SH-11').

[40] The relevant parts of exh 'SH-11' reads as follows:

Tuan/Puan,

NOTIS MENGENAI PERUBAHAN KADAR FAEDAH

PINJAMAN PERUMAHAN KERAJAAN DI DALAM

SURAT PEKELILING PERBENDAHARAAN

I BIL 2 TAHUN 1985

II BIL 8 TAHUN 1987

III BIL 15 TAHUN 1989

Saya diarah menarik perhatian tuan/puan kepada surat-surat Pekeliling seperti di atas yang mengubah kadar faedah Pinjaman Perumahan Kerajaan bagi peminjam-peminjam yang telah meletakkan jawatan daripada perkhidmatan Kerajaan.

2 Pekeliling-Pekeliling ini adalah berkuatkuasa ke atas pegawai Kerajaan yang telah meletakkan jawatan dan telah membuat Pinjaman Perumahan Kerajaan dan pinjaman tersebut telah didaftarkan sebelum 19 Disember 1984. Pekeliling-Pekeliling tersebut telah meminda kadar Pinjaman Perumahan Kerajaan seperti berikut:

Surat Pekeliling Perbendaharaan		Kadar Faedah Pasaran		Tarikh Berkuatkuasa
		Pinjaman RM100,000 Dan Ke atas	Pinjaman Kurang Dari RM100,000	
2.1. Bil.	2 Tahun 1985	12%	10%	Februari 1985 — Jun 1987
2.2. Bil.	8 Tahun 1987	11%	9%	Julai 1987 — Disember 1988
2.3. Bil.	15 Tahun 1989	9%	7%	Januari 1989 hingga sekarang.

3 Tuan/Puan telah meletakkan jawatan pada 30.11.85. Dengan ini adalah diberitahu bahawa mulai dari November 85 kadar faedah terhadap pinjaman tuan/puan dinaikkan kepada 10% setahun dan amaun bayaran balik adalah sebanyak $694.84 sebulan. Mulai dari Julai 87 kadar faedah tersebut telah dinaikkan/diturunkan kepada 9% setahun dan amaun bayaran balik adalah sebanyak $649.14 sebulan. Mulai dari Januari 89 kadar ini telah diturunkan kepada 7% setahun dan amaun bayaran balik adalah sebanyak $566.60 sebulan. Tuan/Puan telah tidak membuat bayaran balik bulanan pada tiap-tiap bulan seperti mana yang telah ditetapkan dan oleh yang demikian akaun pinjaman tuan/puan telah tertunggak dan amaun tunggakan pinjaman tersebut telah menjadi sebanyak $24,899.13 sehingga kini.

[41] It is clear that vide para 3 of exh 'SH-11' the Housing Loans Division has stated that as the plaintiff has resigned on 30 November 1985 the plaintiff was informed that from November 1985 the rate of interest has been increased to 10%pa. From July 1987, the rate of interest has been reduced to 9%pa. From January 1989, the rate of interest has been reduced to 7%pa.

[42] In other words, the Housing Loans Division is claiming for back dating in the variation of the rate of interest.

[43] For the reasons stated earlier, there is no provision in the charge annexture for the Housing Loans Division to claim for back dating of the increase and/or variation of the rate of interest. Under cl 6 of the charge annexture, the Housing Loans Division can by a notice in writing increase and/or vary the rate of interest as from a date specified in the notice which is at a future date and not retrospective.

[44] I find that exh 'SH-11' is not a valid notice to vary the rate of interest as required by cl 6 of the charge annexture.

[45] Since no written notice of increase was ever given by the Housing Loans Division, the Housing Loans Division is not entitled to increase and/or vary the rate of interest.

[46] In view of the aforesaid, I granted order in terms of prayer 1, prayer 3, prayer 4 and prayer 5 of encl 1. And I also ordered that the defendants to give a redemption statement up to 31 January 2004 at 4%pa and this redemption statement to be given to the plaintiff's solicitors within one month from 22October 2003 and the plaintiff must pay the redemption sum by 31January 2004. And if after that date, the defendants have the right to give notice of increase in the rate of interest.

Prayers (1), (3), (4) and (5) allowed.

Reported by Lim Lee Na

A

B

C

D

E

F

G

H

I